IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

CRL.A.No. 1150 of 2002()

CC.558/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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APPELLANT: COMPLAINANT

BHOOPRABHA KURIES LTD., KUNNAMKULAM,
REPRESENTED BY ITS CHAIRMAN, JOSEPH,
S/O. FRANCIS, IMMATTY HOUSE, MATTOM, ALOOR VILLAGE
THRISSUR DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: ACCUSED AND STATE

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1. P.VELAYUDHAN, S/O. PURAMAMCODE DEVAKI AMMA, GURUVAYOOR VILLAGE AND DESO, CHAVAKKAD TALUK.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl. A.No.1150 of 2002-D

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Dated this the 19th day of November, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.558/1999 in the file of the Judicial Magistrate of the First Class, Kunnamkulam, the proceedings initiated under Section 138 of the Negotiable Instruments Act, in which the accused stands acquitted.

2. Although notice was served there was no appearance for the respondent/accused.

3. It is the case of the complainant that the accused was the subscriber to the Kuri conducted by the firm of which the complainant is the Managing Partner, and towards the outstanding instalments due the accused issued the impugned cheque.

4. The evidence adduced in the matter consisted of the evidence of PW.1 and Exts.P1 to P10. Defence got marked Exts.D1 and D2 copies of the lawyer notices.

5. I find that the court below has dismissed the complaint on the basis that the averments in the complaint and the evidence of PW.1 are not consistent, and that the statements in the lawyer notices issued and the averments in the complaint do not tally. According to the complainant the records available with him apart from those produced before the court below would establish the case set up by him. But the same could not be properly made out before the court below. In the circumstances, the order of the court below is set aside. The court below is directed to consider the entire matter afresh after affording opportunity to both sides to adduce evidence, if so they desire and dispose of the case on merits. The parties shall appear before the court below on 19/12/2007. The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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